

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)

Applicant(s): ANDERSON, et.al.

Docket No.

PG3654USw

Serial No.
09/937,232Filing Date
09/24/2001Examiner
CARTAGENAGroup Art Unit
3754

Invention:

VALVE

I hereby certify that this Renewed Petition Under 37 CFR 1.182(Identify type of correspondence)
is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No.703-308-6459on 12/01/2003

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

\$130.00

Complete if Known

Application Number 09/937,232

Filing Date 09/24/2001

First Named Inventor ANDERSON

Examiner Name CARTAGENA

Art Unit 3754

Attorney Docket No. PG3654USW

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Other None
 Deposit Account

Deposit Account Number 07-1392

Deposit Account Name GlaxoSmithKline

The Director is authorized to: (check all that apply)

 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) or any underpayment of fee(s)
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1) (\$)					

2. EXTRA CLAIM FEES FOR UTILITY AND

Extra Claims	Fee from below	Fee Paid
Total Claims	-20** = 0 X = 0.00	
Independent Claims	-3** = 0 X = 0.00	
Multiple Dependent		

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	280	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)				\$0.00

**or number previously paid, if greater. For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non - English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	65	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR § 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Statement	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify)					

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$)

\$130.00

SUBMITTED BY

Name	Robert J. Smith	Registration No. (Attorney/Agent)	40,820	Telephone	919-483-9616
Signature	<i>Robert J. Smith</i>			Date	December 1, 2003

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This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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First Named Inventor	ANDERSON
Examiner Name	CARTAGENA
Art Unit	3754
Attorney Docket No.	PG3654USW

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FEE CALCULATION (continued)

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1802	900	1802 900 Request for expedited examination of a design application	
Other fee (specify)			

Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

\$130.00

SUBMITTED BY		Complete if applicable		
Name	Signature	Registration No. (Attorney/Agent)	Telephone	Date
Robert J. Smith	<i>Robert J. Smith</i>	40,820	919-483-9616	December 1, 2003

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Anderson et al.)
Int'l Appln. No.: PCT/EP00/01444) Examiner: Cartagena
Int'l Filing Date: February 23, 2000)
U.S. Serial No.: 09/937,232) Art Unit: 3754
U.S. Filing Date: September 24, 2001) Applicant Docket #: PG3654USw
Title: VALVE)

RENEWED PETITION UNDER 37 C.F.R. 1.182

Commissioner for Patents
Alexandria, VA 22313

Sir:

Introduction/Overview

This petition is a request for reconsideration on the merits of a decision ("Decision") denying Applicants' Petition to the Commissioner ("Petition") requesting treatment of the above application as a U.S. national stage application and instead as an application filed under 35 U.S.C. 111. The Petition was filed to request reconsideration of a notification of the PCT Legal Office vacating the Notification of Acceptance of Application under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495.

For the reasons set forth herein, Applicants again disagree with the decision and maintain, in view of the record examined in its entirety, that the application clearly was instructed as a national stage application, and thus was correctly accepted by the U.S. Patent Office as a national stage application. Thus, Applicants' respectfully request that the decision be reversed.

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Serial No.: 09/937,232
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Background and Facts

The background and facts of the case at hand are set forth in the Applicants' previously-filed Petition and are thus not repeated since they have been made of record. Applicants point out that the present application was previously accepted as a 35 U.S.C. 371 national stage application by the Patent Office.

Argument

I. Applicants Satisfy the Three Key Indicators Under MPEP 1893.03(a) Which Reflect That An Application Is Filed Under 37 U.S.C. 371

In its Decision, the PCT Legal Office maintains that any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 37 U.S.C. 371(c). The Decision further states indicates that any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

Again, and as set forth in Applicants' Petition, Applicants do not question MPEP 1893.03(a) for the position that an ambiguity as to whether an application is to be filed as a national stage or a 111(a) application is to be resolved in favor of a 111(a) application. Instead, Applicants respectfully argue that the PCT Legal Office repeatedly ignores those specific and clear factors set forth in MPEP 1893.03(a) which determine identification of an application as a national stage application pursuant to 35 U.S.C. 371.

As set forth in Applicants' Petition, and to reiterate, MPEP 1893.03(a) lists three key factors in evaluating whether an application is to be considered as filed under 37 U.S.C. 371. The three factors are:

- (A) The file face form indication of a filing under 35 U.S.C. 371;
- (B) The Form PCT/DO/EO/903 indicating acceptance of the application as a national stage filing under 35 U.S.C. 371; and

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(C) Applicant's statement (or the equivalent) in the originally filed application papers that the application is a national stage filing under 35 U.S.C. 371.

Applicants' previously-filed Petition clearly sets forth that all three factors have been fulfilled. The fulfillment of these factors has not been disputed by the PCT Legal Office.

II. Applicants Have Clearly Identified The Accompanying Specification by PCT Application Number and International Filing Date in the Declaration

MPEP 1893.03(a) states:

"... In accordance with the notice at 1077 O.G. 13 (14 April 1987), if the applicant files a U.S. national application and clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application, then the application will be accepted as filed under 35 U.S.C. 371. Merely claiming priority of an international application in an oath or declaration will not serve to indicate a filing under 35 U.S.C. 371....

(emphasis added)

Applicants' previously-filed Petition clearly establishes that the Declaration contained the PCT application number and international filing number as set forth in the above paragraph. The Declaration went beyond a mere claiming of priority to the PCT application.

In accordance with the express language of the above-cited passage from MPEP 1893.03(a), the application is to be accepted as filed under 35

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U.S.C. 371. Applicants note that the Decision of PCT Legal Office does not dispute Applicants' statements in the declaration referencing the PCT International Application and the International Filing Date.

III. The Position of the PCT Legal Office Concerning Conflicting Instructions Regarding Whether an Application is Filed under 35 U.S.C. 111(a) or 35 U.S.C. 371 Is Erroneously Applied Out of Context

In support of its position, the Decision of the PCT Legal Office Principally relies on the final sentence of MPEP 1893.03(a):

"Also, if there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a)"

The Decision argues that the reference in the Preliminary Amendment to 35 U.S.C. 111 qualifies as a "conflicting instruction". Thus, the Decision argues that the present application must be treated as a 35 U.S.C. 111(a) filing.

Applicants disagree with the Decision on this point, and maintain that the final sentence of MPEP 1893.03(a) has been entirely and improperly interpreted out of context. When viewing this sentence in its proper context with respect to the accompanying oath or declaration in the preceding sentences, Applicants' alleged reference in the Preliminary Amendment does not qualify as a "conflicting instruction". Not discussed in the decision, the first portion of the final paragraph of MPEP 1893.03(a), discusses circumstances under which an application will be accepted as being filed under 35 U.S.C. 371, namely the clear identification of the PCT Application Number and International Filing Date in the Oath or Declaration. The final paragraph concludes by setting forth those circumstances by which the application is will not be accepted under 35 U.S.C. 371, namely the presence of a conflicting instruction.

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Contrary to the assertion of the PCT Legal Office, logic dictates that the final sentence of the final paragraph of MPEP 1893.03(a) is to be interpreted in view of the preceding sentences in the paragraph. More specifically, the term "any conflicting instructions" refers to Applicant's statements in the Oath or Declaration regarding the PCT International Application. If, in accordance with MPEP 1893.03(a), a U.S. national application clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application, then the application will be accepted as filed under 35 U.S.C. 371. Thus, logic dictates that the final sentence of MPEP 1893.03(a) modifies the above provision determining acceptance of the application as being filed under 35 U.S.C. 371, i.e., "any conflicting instruction" refers to the instructions with respect to the oath and declaration.

In the case at hand, Applicants have clearly identified the application in the declaration as being a national stage application and have referred to the specific PCT application number and international filing date. Thus, the application will be accepted, and in fact, the application was accepted as a national stage application as evidenced by the Patent Office's October 30, 2001 mailing of the "Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495. Accordingly, in view of the fulfillment of the requirements of the declaration and the unqualified acceptance of the application as a national stage application, examination of the sentence referring to a "conflicting instruction", upon which the PCT Legal Office relies in its argument, is rendered entirely moot. In particular, no "conflicting instructions" have been raised by the PCT Legal Office with respect to the reference of the application as a national stage application in the Applicants' declaration.

Notwithstanding the above, and as stated herein and in Applicants' previously-filed Declaration, Applicants respectfully submit that other factors in MPEP 1893.03(a) employed in determining whether an application is to be

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treated as a 35 U.S.C. 371 application have been fulfilled. Applicants have not offered a "conflicting instruction" regarding the treatment of the present application when properly viewed in the context of MPEP 1893.03(a).

Conclusion

In view of the record in its totality, it is without question that Applicants clearly instructed the Patent Office to view the above application as a national stage application and not as a filing under 35 U.S.C. 111(a). The argument of the PCT Legal Office in its Decision is arbitrary and without merit in that it does not examine the factors clearly set forth in MPEP 1893.03(a) which govern whether to treat an application as being filed under 35 U.S.C. 371 or 35 U.S.C. 111(a). Applicants have fulfilled these factors as clearly set forth herein and in Applicants' previously-filed Petition to the Commissioner.

Moreover, the presence of a single typographical error in no way gives rise to a "conflicting instruction" when properly viewed in the context of MPEP 1893.03(a), particularly in view of the overwhelming evidence to the contrary. Applicants have clearly satisfied all factors set forth in MPEP 1893.03(a). The application was, and should now be, a 35 U.S.C. 371 national stage application.

In view of the above, Applicant respectfully requests that the the decision of the PCT Legal Office be reversed, and that the present application be properly afforded its initial and correct status as a national stage application.

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Page 7 of 7

Respectfully submitted,

Date: December 1, 2003



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Attorney for Applicants

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